

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-SE-311
)	
La Carpa Corporation)	NAL/Acct. No. 200732100012
Satellite Earth Station, Call Sign E930493)	
Cayey, Puerto Rico)	FRN: 0015987209

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 12, 2007**Released: February 14, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find La Carpa Corporation (“La Carpa”), former licensee of satellite earth station, call sign E930493, Cayey, Puerto Rico (“Cayey earth station”), apparently liable for forfeiture in the amount of six thousand, five hundred dollars (\$6,500) for operating its earth station without Commission authority and for failing to timely file a renewal application. La Carpa acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 25.102(a) and 25.121(e) of the Commission's Rules (“Rules”).²

II. BACKGROUND

2. La Carpa’s license for its fixed-satellite service Cayey earth station expired on December 23, 2003. On July 10, 2006, during a telephone conversation with International Bureau staff concerning an unrelated matter, La Carpa indicated that, to the best of its knowledge, the license for the Cayey earth station did not have an expiration date. Because it appeared that La Carpa may have operated the earth station after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On December 27, 2006, the Enforcement Bureau's Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to La Carpa.³

3. In its January 16, 2007 response to the LOI,⁴ La Carpa explained that it transmitted from the Cayey earth station from approximately 1994 to 1999, and did not transmit again from that earth station until May 2006, after upgrading its equipment. La Carpa also stated that its operators “did not realize” that the license needed to be renewed. La Carpa asserted that once it received the LOI, it initiated steps to apply for special temporary authority (“STA”) to continue operating its earth station pending

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a) and 25.121(e).

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to La Carpa Corporation (Dec. 27, 2006).

⁴ Letter from Mr. Julio Cruz Lopez, President, La Carpa Corporation, to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Jan. 16, 2007).

Commission action on a new license application. According to Commission records, as of January 26, 2007, La Carpa has not yet applied for an STA to continue operations at the Cayey earth station.

III. DISCUSSION

4. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires that licensees file renewal applications for earth stations “no earlier than 90 days, and no later than 30 days, before the expiration of the license.”⁵ Absent a timely filed renewal application, an earth station license automatically terminates.⁶

5. As a Commission licensee, La Carpa was required to maintain its authorization in order to operate its earth station. La Carpa has operated its Cayey earth station without Commission authority since May of 2006, and has not applied for an STA to continue operations. By operating its earth station for approximately nine months without an instrument of authorization, La Carpa has apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. La Carpa also acted in apparent violation of Section 25.121(e) of the Rules by allowing its license to lapse without renewal.

6. Section 503(b) of the Act,⁷ and Section 1.80(a) of the Rules,⁸ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and “repeatedly” means more than once.⁹ Based upon the record before us, it appears that La Carpa's violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules are willful and repeated.

7. In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁰

8. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.¹¹ As the Commission recently held, a licensee's failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.¹² Accordingly, we

⁵ 47 C.F.R. § 25.121(e).

⁶ 47 C.F.R. § 161(b).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80(a).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *WCS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee's inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

¹⁰ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 C.F.R. 1.80(b).

herein propose separate forfeiture amounts for La Carpa's separate violations.

9. Consistent with precedent,¹³ we propose a forfeiture in the amount of \$1,500 for La Carpa's failure to file a renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules. Additionally, we propose a forfeiture in the amount of \$5,000 for La Carpa's operation of its earth station after December 23, 2003. In proposing this forfeiture amount, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.¹⁴ Thus, we propose an aggregate forfeiture amount of \$6,500 (\$1,500 for failure to file a timely renewal application and \$5,000 for unauthorized operation).

10. Finally, we find no basis for mitigation of the proposed forfeiture amount. First, La Carpa claims that it did not realize that the Cayey earth station license needed to be renewed. As a Commission licensee, La Carpa is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its earth station.¹⁵ The Commission has long held that a downward adjustment of an assessed forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements.¹⁶ Second, La Carpa states that once it received the LOI and learned that the Cayey earth station license had lapsed, it initiated the process to correct the violation. The Commission has explained that it "expects" violators to implement corrective action to bring past violations into compliance, and therefore, such actions do not nullify or mitigate past violations.¹⁷

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¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (assessing a proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application) ("*Discussion Radio*").

¹³ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Lazer Broadcasting*"); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Criswell*"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) ("*NWN*"); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Journal Broadcast*"); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) ("*SDN*").

¹⁴ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Lazer Broadcasting*, 21 FCC Rcd 8710; *Criswell*, 21 FCC Rcd at 5107; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

¹⁵ See *Discussion Radio*, 19 FCC Rcd at 7437.

¹⁶ See *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . ignorance of the law is [not] a mitigating factor"); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected "to know and conform their conduct to the requirements of our rules").

¹⁷ See *AT&T Wireless*, Forfeiture Order, 17 FCC Rcd at 21875-76; *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 (1994).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁹ La Carpa **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand, five hundred dollars (\$6,500) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁰ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, La Carpa **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²¹

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁰ 47 C.F.R. § 1.80.

²¹ See 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Mr. Julio Cruz Lopez, President, La Carpa Corporation, P.O. Box 372620, Cayey, Puerto Rico 00737-2620.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau